

RECEIVED
CENTRAL FAX CENTER

REMARKS/ARGUMENTS

MAR 14 2007

Reconsideration of the above-identified application is respectfully requested.

In the Office Action dated October 16, 2006, Claims 1-27 are pending. Claims 1-14, and 18-27 are withdrawn due to restriction order. Claims 15-17 are examined and rejected.

Claim 16 is rejected under 35 U.S.C. § 112, 2nd paragraph.

Claims 15-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Yeung et al., "The hypolipidemic effect of some lesser-known edible and medicinal mushrooms", June 16, 2002, 2002 Annual Meeting and Food Expo -- Anaheim, California (XP-002275273) (hereinafter "Yeung").

Claims 15-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Chen et al. (hereinafter "Chen").

Claims 15-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Agriffchina.

Claims 15-17 are rejected under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wang et al. (hereinafter "Wang").

Applicants acknowledged the receipt of PTO-892.

In response to the rejections, Applicants have filed a response on March 5, 2007, in which Applicants amended claims 15 and 16, cancelled claim 17, and add new claims 28-31, which are supported by the specification on pages 4-6, and original claims 5-13. No new matter has been introduced.

Due to inadvertent oversight, the last sentence of the amended claim 16 read "wherein said disease is hypertension, hyperlipidemia and obesity," while in fact it

Amdt. dated March 14, 2007

Reply to Office Action of October 16, 2006

RECEIVED
CENTRAL FAX CENTER
MAR 14 2007

should be read as "wherein said disease is one or more of hypertension, hyperlipidemia and obesity." This supplemental amendment is filed for the purpose of correcting this minor mistake.

Applicants respectfully submit that the amendments have overcome the rejections for the reasons set forth below:

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claim 16 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because claim 16 recites "agent consistent to claim 15 comprised of"

In response to the rejections, Applicants have amended claim 16 to recite "agent according to claim 15," as suggested by the Examiner. Applicants respectfully submit that the amendments obviate the grounds for the rejection. Withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, is respectfully requested.

Rejections Under 35 U.S.C. § 102

Claims 15-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Yeung for reasons stated on page 3 of the Office Action. Applicants respectfully traverse the rejection.

For anticipation under 35 U.S.C. §102, the reference "must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present." (MPEP §706.02, IV. Distinction between 35 U.S.C. 102 and 103, page 700-21). The Federal Circuit has held that prior art is anticipatory only if every element of the claimed invention is disclosed in a single item of prior art in the form

literally defined in the claim (*Jamesbury Corp. v. Liton Indus. Products*, 756 F.2d 1556, (Fed. Cir. 1985); *Atlas Powder Co. v. DuPont*, 750 F.2d 1569, (Fed. Cir. 1984); *American Hospital Suppl v. Travenol Labs*, 745 F.2d 1 (Fed. Cir. 1984).

Independent claim 15, as amended, is directed to a disease preventing/treating agent comprising a dried powder and/or a hot water extract of *Pleurotus nebrodensis*.

Yeung generally describes the hypolipidemic effect of male Sprague-Dawley rats fed with mushroom diets. The mushrooms include *P. nebrodensis*. Yeung, however, does not disclose that the agent is "a dried powder" and/or "a hot water extract" of *Pleurotus nebrodensis*" as recited in claim 15. Accordingly, Yeung does not anticipate claim 15 because it fails to teach every aspect of the claimed invention. Claim 16 is patentable over Yeung because it depends on Claim 15. Withdrawal of the rejection to claims 15 and 16 under 35 USC 102(b) over Yeung is respectfully requested. Claim 17 has been canceled. Rejection to this claim is now moot.

Chen generally describes that *Pleurotus eryngii* (DC. Et Fr.) Quel. Var. nebrodensis Inzenga can be used as medicinal materials for treatment of stomach-ache and limb numb. Chen does not disclose using "a dried powder and/or a hot water extract of *Pleurotus nebrodensis*," as recited in claim 15. Accordingly, Chen does not anticipate claim 15 because it fails to teach every aspect of the claimed invention. Claim 16 is patentable over Chen because it depends on Claim 15. Withdrawal of the rejection to claims 15 and 16 under 35 USC 102(b) over Chen is respectfully requested. Claim 17 has been canceled. Rejection to this claim is now moot.

Agriffchina generally describes that *Pleurotus nebrodensis* has various medicinal effects. Agriffchina does not disclose "a dried powder and/or a hot water extract of

Pleurotus nebrodensis," as recited in claim 15. Accordingly, Agriffchina does not anticipate claim 15 because it fails to teach every aspect of the claimed invention.

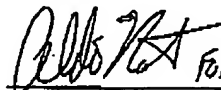
In addition, according to Agriffchina's website, Awei mushroom (*pleurotus nebrodensis*) was published on October 10, 2004. A copy of the Agriffchina product list is attached as Exhibit 1. Because the present invention claims the priority of Japanese patent application No. 2002-378014, filed on December 26, 2002, and Japanese patent application No. 2003-147895, filed on May 26, 2003, both were filed more than one year earlier than the Awe mushroom of Agriffchina, Agriffchina, therefore, is not a prior art reference under 35 U.S.C. § 102(b). Withdrawal of the rejection to claims 15-16 under 35 USC 102(b) over Agriffchina is respectfully requested. Claim 17 has been canceled. Rejection to this claim is now moot.

Wang generally describes that an extract of *Pleurotus* genus may be used to prevent and treat hypertension. *Pleurotus eryngii* (DC. Et Fr.) Quel. Var. *nebrodensis* Inzenga is listed as one of the species of *Pleurotus*. Wang, however, only discloses extracting *Pleurotus* mushrooms with organic solvents (*see e.g.*, paragraphs [0044] and [0045]). Wang does not disclose "a dried powder and/or a hot water extract of *Pleurotus nebrodensis*," as recited in claim 15. In fact, by specifying using an "extract of *Pleurotus* genus," Wang teaches away from using a dried powder of *Pleurotus nebrodensis*. Accordingly, Wang does not render claim 15 unpatentable because it does not teach or suggest all the limitations of the claimed invention. Claim 16 is patentable over Wang because it depends on Claim 15. Withdrawal of the rejection to claims 15 and 16 under 35 USC 102(e) and 103(a) over Wang is respectfully requested. Claim 17 has been canceled. Rejection to this claim is now moot.

In view of the foregoing remarks, favorable reconsideration of all pending claims is requested. Applicants respectfully submit that this application is in condition for allowance and request that a notice of allowance be issued. Should the Examiner believe that anything further is required to expedite the prosecution of this application or further clarify the issues, the Examiner is requested to contact Applicants' attorney at the telephone number listed below.

Respectfully submitted,

Dated: March 14, 2007

 FOR FEI-FEI CHAO

Fei-Fei Chao
Registration No. 43,538
Andrews Kurth LLP
1350 I Street, NW
Suite 1100
Washington, D.C. 20005
Telephone: (202) 662-3036
Fax: (202) 662-2739

Enclosure: Exhibit 1: Agrifichina Product List